



Early Journal Content on JSTOR, Free to Anyone in the World

This article is one of nearly 500,000 scholarly works digitized and made freely available to everyone in the world by JSTOR.

Known as the Early Journal Content, this set of works include research articles, news, letters, and other writings published in more than 200 of the oldest leading academic journals. The works date from the mid-seventeenth to the early twentieth centuries.

We encourage people to read and share the Early Journal Content openly and to tell others that this resource exists. People may post this content online or redistribute in any way for non-commercial purposes.

Read more about Early Journal Content at <http://about.jstor.org/participate-jstor/individuals/early-journal-content>.

JSTOR is a digital library of academic journals, books, and primary source objects. JSTOR helps people discover, use, and build upon a wide range of content through a powerful research and teaching platform, and preserves this content for future generations. JSTOR is part of ITHAKA, a not-for-profit organization that also includes Ithaka S+R and Portico. For more information about JSTOR, please contact support@jstor.org.

man of that subcommittee is Mr. Paul S. Reinsch, recently head of our diplomatic service in China.

REPORT OF SUBCOMMITTEE NO. 4

To consider the subjects not now adequately regulated by international law, but as to which the interests of international justice require that rules of law shall be declared and accepted.

Dr. REINSCH. Mr. Chairman, the committee made a selection from a large number of topics with a view, not of covering the field, but of selecting topics upon which, in our opinion, attention has to be concentrated.

We have had in mind also the fact that in international law as it has hitherto been treated in text-books and in general discussions, there has been but a very small part that could be described as law in the sense of being universally accepted and recognized rules that must be followed; and a great deal of the material thus treated consisted of precedents or the practice of this or that state, without presuming or pretending to be a rule imposed by all upon each other by their common will. So in outlining this program we have not felt so much that a code or a codification of individual parts could immediately be produced, but that it was necessary to review the material with the purpose of focusing the knowledge thus gained upon a clear statement of principles that might recommend itself to the representative publicists and the governments as constituting rules which could be generally applied and would be generally accepted.

Now, with that in view we have divided these topics that we have selected out of the multitude of material, into three classes, having in view the fact that the committee desires to work for the advancement of international law in the application of that law by an international tribunal. Therefore, we have put into class one those topics upon which we believe that an early formulation of at least a certain number of definite rules is advisable. We have put into the second class those topics which will require, while they are in some cases more important even than the individual topics in class one, more time and more research before an adequate basis is found for making such proposed rules. In the third class we have placed those topics concerning which we had some doubt to what extent it would be possible to find a basis for general rules but which seemed to merit study with that idea in view.

I shall now read to you the list of topics, with no commentary except in one or two cases. I might state that on several of these topics material was presented to the subcommittee, but it was felt that the committee had too short a time for a weighing of these materials, that they should be made a part of the *res gestae* and not brought up for discussion at this time.

The topics under the first class are:

(1) The grounds upon which intervention is justified, and the various forms which intervention may take. (It therefore deals both with the substantive law and the law of procedure in the matters of intervention.)

(2) Qualified and full recognition of governments and states. (This includes, therefore, four topics, qualified recognition of governments and full recognition of governments, and the same for states.)

(3) The question of extradition, including the definition of political offenses.

(4) The treatment and protection of domiciled aliens, including their eligibility and liability to military service (which has recently been one of the questions calling for consideration).

(5) The jurisdiction of the air. (A paper was presented on this subject last night.)

(6) Definition of the rights and immunities of consuls and other foreign agents. (Those immunities are now entirely based upon courtesy without any universally binding custom.)

(7) The more specific definition of the rules of international law applying to the instrumentalities of international electrical communications by cable, telegraph and radio. (A part of that topic was treated last night, and some resolutions in connection with that paper were submitted to the committee.)

Under the second class there are the following subjects which to us seemed to be very important, requiring, however, considerable investigation before there could be any assurance with respect to a suggestion of universally accepted rules.

(1) General policy of the open door, with particular reference to the control of the production and distribution of the chief raw materials; utilization of capital in the development of backward countries; prevention of discrimination in international railroad rates, customs tariffs, etc.

(2) The listing of offenses which may be properly characterized as international crimes, and procedure for their prevention. (That is, in the mind of the subcommittee, crimes against the general rights of humanity, and such as are under special international arrangements already punishable or forbidden by international arrangements, as, for instance, the conventions concerning slavery, white slavery trade, etc.)

(3) International administrative unions, their organization, their procedure, their relations to each other.

Under class three, we have placed the subjects which the subcommittee believes should be studied with a view to determining whether or not they may be brought within the realm of law. They are the following:

(1) The international regulation of monopolies and combinations in restraint of trade.

(2) Espionage in time of peace.

(3) The applicability of the theory of state equality to modern political conditions, and in modern international organization (referring particularly to the equality of states in international unions or in the League of Nations, and all the questions connected therewith.)

(4) Naturalization and expatriation (involving the dual citizenship problem).

(5) The right of asylum, in legations, consulates and on ships.

(6) The avoidance of multiple taxation, through international agreement.

That completes the list which we suggest for work in the immediate future.

I might state that the subcommittee felt that emphasis should be placed upon the normal relations of states, and that while we proceeded with the development and elaboration of the rules relating to war, after all, the important thing now is to facilitate normal relations between different countries by making the rules, regulations and laws of such a nature as to facilitate intercourse and the building up of common interests. We therefore felt that it would be desirable for the Society to give emphasis to these rules of normal life, on the basis of which we hope there may be built up, gradually, slowly, but with a certain and unfailing growth, a feeling of solidarity throughout the civilized world, which is now practically the entire world. Such a feeling would be the best safeguard against war, because unless we have, even back of our laws of war, that feeling of human solidarity that looks upon a breach of the laws of war, as an offense and a crime, then we shall be building very largely in vain. It is therefore that your fourth subcommittee commends these topics to your very particular attention.

(At this point Hon. OSCAR S. STRAUS took the chair.)

Mr. GEORGE W. KIRCHWEY. Would it be permitted to ask a question of Dr. Reinsch, the Chairman of the Subcommittee No. 4, in connection with the report?

Chairman STRAUS. Certainly.

Mr. KIRCHWEY. Subcommittee No. 4 is to consider the subjects not now adequately regulated by international law, but as to which the interests of international justice require that rules of law shall be declared and accepted. I suppose the omission of any plan for a league or an association of nations, which is the one vital question, was deliberately omitted. I suppose that was deliberate; that there was some reason why the committee thought it inexpedient and inadvisable to omit the one topic which is in the minds of all of us, and which I imagine the American community will expect us to have some opinions upon. My point is that some form of international association, some form of coordinated, organized international intercourse seems to be impending, and there is certainly a fair question as to whether this American Society of International Law is not competent to express some opinion as to what form the organization should be, or at any rate to possibly even advise as to what form of organization would, in its opinion, be feasible or desirable. I do not make that so much in the form of a suggestion as I do as a question addressed to Subcommittee No. 4, which appears to me the only one of these four subcommittees into whose jurisdiction that would seem to fall.

Dr. REINSCH. I might state that the matter was not taken up by the subcommittee at all, and I can therefore only speak for myself as to why it did not occur to me as a member of the committee to suggest that it be taken up. The present effort of organization of the world into a league of nations is, after all, an outgrowth and a very direct one of the Hague Conferences, and very closely connected with them. That is a very big subject, one on

which a great deal has already been done and which did not seem to fall, for that reason, into the frame of limitations which have been laid down for the work of this subcommittee. It seemed also a very important subject that would probably require special action, would require by itself the work of a committee, and the Society or its officials could have hardly intended to have that listed among a number of specific topics such as I have read to you. I do not know how the other members of the subcommittee feel.

Chairman STRAUS. Is there any other member of the subcommittee here who wants to say something on that topic?

Professor EUGENE WAMBAUGH. The reason it was not taken care of by the subcommittee was because it was not part of the work assigned to the subcommittee. The subject is: "The subjects not now adequately regulated by international law, but as to which the interests of international justice require that rules of law shall be declared and accepted." There are two organizations at the present time regarding this Society of Nations. One is the League of Nations, which has been operating for more than a year. It would have been an impertinence for this subcommittee to have gone outside the existing adequate machinery to suggest new machinery when the subcommittee was not asked so to do.

Chairman STRAUS. Tomorrow morning, as all of you know, and can see by the program on page 4, there will be consideration of, and action upon reports of the Subcommittees on Advancement of International Law. There will be afterwards a business meeting, then the adjournment of the Society, then a meeting of the Executive Council, and at 7.30 o'clock in the evening the banquet in this room.

Ladies and gentlemen, this closes the program for this evening. I therefore declare this session adjourned.

(Thereupon, at 10:30 o'clock p. m., an adjournment was taken.)